Remarks/Arguments:

Previously presented claims 77-96, with claim 77 amended hereby, are pending.

Claim 77 is amended by reinserting the "employing" process step in combination with the "selecting" process step. Support for the amendment can be found in the specification paragraph bridging pages 15 and 16.

Claim 77 was rejected under 35 USC 112, second paragraph, as allegedly being indefinite. Reconsideration of the rejection is requested in view of the changes to claim 77 effected hereby.

According to the statement of rejection (Office Action, page 3),

> it is not clear what the word "employing" refers to . . . it is not clear what formula Applicants refer to when they say that the volumes are "variables" and also it is not clear what relationship this has with the spatial brightness function.

With respect to the meaning of "employing," the answer is provided in the specification on page 15, first sentence of the last, incomplete paragraph, i.e.:

> What characteristics of the spatial brightness function can be employed when determining the expected distribution of the number of counts are values of volumes of the sections of the measurement volume corresponding to a selected set of values of the spatial brightness.

Hence, the values of volumes of sections of the measurement volume are employed in the determination of th expected distribution of the number of counts. This directly corresponds to the language of claim 77 as amended hereby, i.e.,

> Determining a distribution function of specific brightness of the particles or molecules based on the experimental distribution function of the number of photon counts measured, by fitting an expected distribution function of the number of photon counts against the experimental distribution function of photon counts, wherein the expected distribution function of the number of photon counts is calculated using

> characteristics of a spatial brightness function, employing values of volumes of sections fo the measurement volume corresponding to a selected set of values of the spatial brightness function and considering the volumes as variables depending on modeling parameters of the spatial brightness function, and selecting the values of these modeling parameters which yield the closest fit between the experimentally determined and the expected distribution of the number of photon counts.

The presently used phraseology helps to understand that the clauses "employing values . . ." and "selecting the values" do not refer to separate steps of the method but, rather, specify in more detail the third step of "determining a distribution function."

With respect to the phrase "considering the volumes as variables depending on modeling parameters of the spatial brightness function" being vague and indefinite, Applicants disagree. From the language of claim 77, the following relationship is clear:

The volumes of sections of the measurement volume are used as variables influencing the expected distribution function of the number of photon counts. The volumes, themselves, and not independent; rather, the volumes are dependent on modeling parameters of the spatial brightness function.

This "volumes"/"variables"/"spatial brightness function"relationship is further explained in the subject application, in the paragraph bridging pages 15 and 16, i.e.:

> What characteristics of the spatial brightness function can be employed when determining the expected distribution of the number of counts are values of volumes of the sections of the measurement volume corresponding to a selected set of values of the spatial brightness. Typically, a set of twenty or thirty values of the spatial brightness . . . have been selected . . . . Because of the large number of the sections of the measurement volume, it would be less preferred to consider volumes corresponding to each of the sections as independent variables. It is convenient to consider them as variables depending on a few other parameters, . . . [f]or instance, the volumes of the sections depend on values of the convergence angle of the laser

> beam and the diameter of the pinhole. It might therefore be preferred to use the pinhole dimensions and the convergence angle of the incident laser beam as modeling parameters of the spatial brightness function.

The foregoing shows how the subject matter circumscribed by "volumes as variables depending on modeling parameters of the spatial brightness function" would be readily apparent to one skilled in the art—in particularly in light of the aforesaid description provided in the specification. The PTO must interpret the claims in light of the specification. *In re Teague*, 117 USPQ 284 (CCPA 1958). Since one skilled in the art would not be confused as to the subject matter covered by the language at issue, the requirements of §112, ¶2, are satisfied. *In re Kroekel*, 183 USPQ 610 (CCPA 1974).

In view of the explanation provided, above, withdrawal of the§112, ¶2, rejection appears to be in order.

According to the final Office Action (mailed July 7, 2004), claims 78-96 are allowable over the prior art. Applicants wish to thank the examiner for the notification of allowable subject matter.

Claim 77 was implicitly found allowable in accordance with the Office Action. That is, the Office Action does not reject claim 77 over the prior art. Moreover, the rejection of claim 77 under 35 USC 112, second paragraph, is overcome by the instant amendment.

Accordingly, the subject matter of pending claims 77-96 being expressly or implicitly allowable in accordance with the Office Action, and the sole remaining issue of record – the section 112, second paragraph, rejection – being resolved, hereby, the subject application appears to be in form for immediate allowance.

Favorable action is requested.

Respectfully submitted,

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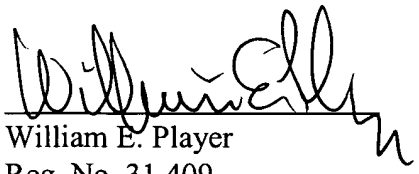
By 
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